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S E C R E T SECTION 01 OF 03 ABUJA 002406

NOFORN
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DEPT FOR AF/W, INR/AA
DOE FOR GEORGE PERSON

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TAGS: PGOV PREL NI
SUBJECT: NIGERIA: SUPREME COURT UPHOLDS 2007 PRESIDENTIAL
ELECTION IN NARROW 4-3 VOTE

REF: A. ABUJA 2065 AND PREVIOUS

1B. ABUJA 2382
1C. ABUJA 2339
1D. ABUJA 2123
1E. ABUJA 2348
1F. ABUJA 2347
1G. ABUJA 2325
1H. ABUJA 2278

Classified By: Political Counselor Walter Pflaumer for reasons 1.4. (b & d).

11. (C) Summary: In a 4-3 vote December 12, the Nigerian Supreme Court (SC) upheld the 2007 Presidential election of Umaru Musa Yar'Adua of the Peoples Democratic Party (PDP), and rejected the appeal of the main opposition candidate, Muhammadu Buhari of the All Nigerian Peoples Party (ANPP). It also rejected the appeal of third-place finisher, former Vice President Atiku Abubakar of the Action Congress (AC) by 6 to 1. The very close SC judgment in the Buhari case was reflected in the tenor of the opinions, with caustic remarks being exchanged by the Justices on both sides. While security around the courthouse was tight prior to the ruling, there have been no reports of disturbances following the ruling, and we do not anticipate any. Some have argued that uncertainty over this case explains the Yar'Adua Administration's inaction on pressing policy issues and lack of implementation. Nonetheless, we believe the President's own personality, indecisive management style and ill health are key factors in explaining the GON's inaction. We do not expect much change or an improved decision-making process from Yar'Adua, however, though we would welcome being proven wrong. Whether the President's deteriorating health or his inability to cope with the enormity of managing Nigeria's complex problems is the cause of this indecision, Nigeria's leadership situation is worrisome, coupled as it is now with economic pressures from the global economic crisis. The SC decision is anti-climactic for most everyday Nigerians. The only impacts are on the political elite and whether Nigeria's short and medium term leadership will improve. At the moment, we do not think so. End summary.

Supreme Court Finally Delivers its Judgment

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12. (SBU) On December 12, the Nigerian Supreme Court finally delivered its ruling on the appeals lodged by the two main

opposition candidates against the April 21, 2007 Presidential election, upholding the election of President Umaru Yar'Adua and Vice President (VP) Goodluck Jonathan. By a narrow 4-3 vote, the Justices rejected the main petition of ANPP candidate, and former Head of State, Muhammadu Buhari. Justice Niki Tobi, who read the majority judgment, argued that Buhari failed to overcome the burden of proof laid down in the Electoral Act, which requires the appellant to prove that any flaws in the conduct of the election were sufficiently severe as to overturn the result. In her dissenting opinion, by contrast, Justice Aloma Mariam Mukhtar caustically attacked Justice Tobi's ruling, noting that he had, inter alia, refused to acknowledge even well-known and legally unchallenged facts such as the failure of the Independent National Electoral Commission (INEC) to provide ballot papers with serial numbers (as is required by law). The Justices more decisively (6-1) rejected the appeal of AC candidate and former VP Atiku, which was based on the fact that INEC had initially excluded him from running, noting that he had, in the end, been allowed on the ballot.

Anti-climactic Ruling Produces No Security Problems

¶3. (SBU) While security in Abuja was tight, particularly around the courthouse, leading up to the ruling, with both police and military units deployed at key junctions, no trouble has since been reported anywhere in the city or elsewhere. While most observers expect some caustic newspaper editorials, they do not anticipate any substantial demonstrations in reaction to what some are describing as a "ho-hum" decision. Contacts in the news media, in their

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initial reaction, have commented that the closeness of the main ruling should strengthen the view that the Justices at least considered the concerns of the opposition, even if they did not win. Post will monitor the security situation closely in the coming days, but does not anticipate there to be much response to this anti-climactic outcome.

What Next?

¶4. (C) For over a year, some analysts have argued at least some of the indecisiveness and ineffectiveness of the Yar'Adua government could be explained by the President's concerns about the SC case, and the shadow it spread over his own legitimacy. The argument was that he had been reluctant to take dramatic steps to tackle the country's many serious problems while questions remained over his own right to rule. Even GON officials have sometimes made this case, albeit in private, if only as an excuse for why more has not been done on one issue or another.

Breaking a Logjam?

¶5. (C) Observers recall that when Yar'Adua was Governor of Katsina State, he did very little for the first year or so, but then undertook a major program of infrastructural expansion and other reforms. It is quite possible that the in next month or so we will, in fact, see a similar flurry of activity out of the GON on several fronts. There is certainly no shortage of readily available steps President Yar'Adua could take to counter the impressions of indecision and inaction which have characterized his administration. We note that the Electoral Review Commission (ERC) established in August 2007 to propose reforms to the electoral process has now (on December 11) submitted its report to President Yar'Adua (FYI: the Ambassador is scheduled to meet ERC Chairman Uwais on December 18 to discuss the report). We also note that the Senate has just approved three more of the newly nominated Ministers proposed to be part of the ongoing Cabinet reshuffle, bringing the total confirmed to 16 (though no portfolios have yet been designated). In addition, the Senate has finally established the committee which will conduct a complete review of the 1999 constitution. Decisive steps to enact the reforms recommended by the ERC (which has

kindly included draft legislation and constitutional amendments in its report), or to get the cabinet reshuffle over and done with would be welcomed by all, and are within the President's purview. Long-awaited reform steps such as sacking the incompetent INEC Chairman Maurice Iwu or some of his more corrupt Ministers (Attorney General Aondoakaa comes to mind) would also be applauded and put some teeth in his rhetoric.

Probably Not

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¶6. (C) As we have reported previously (see ref A), however, we have long seen Yar'Adua as personally indecisive and diffident, shy of the public spotlight and wedded to a slow, deliberate management style. Most of what seemed to be real signs of reform during his first six months in office -- his unwillingness to interfere in the workings of the National Assembly, his Ministers portfolios and the Courts, his public endorsements of the rule of law and due process, his gradual distancing of himself from Obasanjo -- now look more like a pattern of inactivity which has won him the public nickname of "Baba Go-Slow" (or to translate for those unfamiliar with Nigerian English, "Daddy Traffic Jam").

¶7. (S/NF) This, of course, was even before his health problems worsened. There are, of course, differing views on just how ill he is, but, as even some of his own staff have begun to remark, he is now only able to work limited hours, delegates many duties to others, and shields himself behind his wife and a close personal staff from as much of the work of his office as possible.

Implications for USG Policy

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¶8. (C) Even given all the shortcomings of the government, Nigeria is still very important to the USG. We have previously stated our intention to try to use the ERC recommendations (once we had them) as the hook for a major effort, in cooperation with other friendly governments, to encourage the GON toward real electoral reform. We also certainly intend to support publicly any signs of progress which emerge from the hoped-for improved environment following the SC ruling. In private, we may want to consider going further, making clear our view that the GON should have no excuses for further delay in addressing the many major issues on its plate. The Ambassador recently had a round of meetings (refs E-H) with FonMin, Presidential Special advisors, Governors close to Yar'Adua, etc., to note USG concerns over where Nigeria is headed, and our impression that it seems to be floundering. We, however, have yet to say anything specifically or personally against President Yar'Adua. If things do not improve in the post-SC environment in the next couple months, we may need to consider taking such an approach.

Sanders